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Security Council

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Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 15 April 2002 from the Permanent Representative of South Africa to the United Nations addressed to the Chairman of the Committee

On instruction from my Government, I have the honour to submit to the Committee established pursuant to Security Council resolution 1267 (1999) the report of the measures taken by the Republic of South Africa to implement Security Council resolution 1390 (2002) (see annex).

I would be grateful if you could circulate the present letter and its annex as a document of the Security Council.

(*Signed*) Dumisani S. **Kumalo**
Ambassador and Permanent Representative

02-34593 (E) 260402

Annex to the letter dated 15 April 2002 from the Permanent Representative of South Africa to the United Nations addressed to the Chairman of the Committee

SOUTH AFRICA'S NATIONAL REPORT SUBMITTED PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1390 (2002) TO THE SECURITY COUNCIL SANCTIONS COMMITTEE ON AFGHANISTAN: THE IMPLEMENTATION OF OPERATIVE PARAGRAPH 2 (A) TO (C) OF RESOLUTION 1390 (2002)

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SOUTH AFRICA'S NATIONAL REPORT PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1390 (2002) TO THE SECURITY COUNCIL SANCTIONS COMMITTEE ON AFGHANISTAN: THE IMPLEMENTATION OF OPERATIVE PARAGRAPH 2 (A) TO (C) OF RESOLUTION 1390 (2002)

SECTION A

OPERATIVE PARAGRAPH 2

The implementation of operative paragraph 2 (a) to (c) of Security Council resolution 1390 (2002)

Question 1: What legislative and/or administrative measures have been taken to freeze the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list mentioned in paragraph 2 of resolution 1390 (2002), including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and to ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory

Response:

The South African Government has taken the following legislative and/or administrative measures to give effect to the measures contained in paragraph 2 (a):

A. Legislation:

1(a) Currency and Exchanges Act, 1933 (Act No. 9 of 1933) and Exchange Control Regulations, 1961.

In terms of Exchange Control Regulations, 1961, promulgated in terms of Section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), the control over South Africa's foreign currency reserves, as well as the accrual and spending thereof, is vested in the Treasury. The Regulations define the Treasury as the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that Department, deals with the matter on the authority of the Minister of Finance.

The Minister of Finance has in terms of the Regulations appointed the Exchange Control Department of the South African Reserve Bank to carry out certain functions assigned to the Treasury, and as such the Department is responsible for the day-to-day administration of exchange control.

The Minister of Finance has also appointed certain banks to act as Authorised Dealers in foreign exchange. This appointment gives the Authorised Dealers the right to buy and sell foreign currency, but under the conditions and within the limits prescribed by the Exchange Control Department to the Authorised Dealers through Exchange Control Circulars.

The Act empowers the Minister of Finance to instruct Authorised Dealers to freeze funds and financial resources and block accounts held in South Africa and to prohibit the movement of capital into and out of South Africa.

Regulation 3 of the Exchange Control Regulations provides for the restriction on the export of currency, gold, securities etc. and import of South African Bank notes. In particular, Regulation 3(1)(c) provides as follows:

> "3. (1) Subject to any exemption which may be granted by the Treasury or a person authorised by the Treasury, no person shall, without permission granted by the Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose –
>
> (c) make any payment to, or in favour, or on behalf of a person resident outside the Republic, or place any sum to the credit of such person;"

The Exchange Control Department of the South African Reserve Bank may, therefore, through the issuing of an Exchange Control Circular grant or withdraw a specific exemption.

The Treasury may also in terms of a Notice under Regulation 4 (3) of the Exchange Control Regulations direct that all sums due by any other person to persons resident in a particular country, or any particular person whom the Treasury has reasonable grounds to suspect of having contravened any provision of the Exchange Control Regulation relating to Foreign Exchange, be paid into a blocked account. The Act is attached as Addendum A to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

1(b) Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)

This Act was specifically passed to deal with crime syndicates operating in South Africa. Any person who participates in the activities of a criminal enterprise (even if there is no evidence linking that person to a specific crime) could be acting in contravention of this Act. An accused convicted under this Act could face a maximum fine of one billion Rand or life imprisonment. This Act also contains the offences of money laundering and related activities. This Act has repealed the Proceeds of Crime Act of 1996 and now incorporates provisions relating to the confiscation of the proceeds of crime. Consequently the Prevention of Organised Crime Act now empowers the courts to order that the benefit that an offender had derived from the offence of which he/she had been

convicted, may be confiscated. Upon application by the Office of the National Director of Public Prosecutions to the High Court, property of persons implicated under this Act may be forfeited to the State. Finances generated though the forfeiture of assets will be used to assist law enforcement agencies fighting crime as well as the victims of crime. The Act is attached as Addendum C to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S 2001 1281).

1(c) Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)

The Financial Intelligence Centre (FIC) Act was adopted by the South African Parliament on 6 November 2001 and was assented to by the President on 28 November 2001. Certain provisions, including those establishing the Financial Intelligence Centre, took effect on 31 January 2002. A process is currently underway to draft regulations that will support the operation of the other provisions of this Act. It is envisaged that the majority of these provisions, which include provisions concerning the reporting of suspicious and unusual transactions, will take effect during the course of this year.

The Act draws extensively on international best practice and provides the South African Government with the tools to play an important role in combating all money laundering activities. It sets up an anti-money laundering regime which encourages voluntary compliance and self-regulation by institutions which otherwise may be exploited for money laundering purposes. To this extent, the FIC Act complements the Prevention of Organised Crime Act of 1998. The Act is attached as Addendum F to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

1(d) International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996)

This Act facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between South Africa and Foreign States. The Act provides for mechanisms to give judicial effect to requests for assistance in obtaining evidence, providing *inter alia* for the examination of witnesses, mutual execution of sentences and the confiscation and transfer of the proceeds of crime. The Act is attached as Addendum M to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

B. Conventions:

1(e) Transnational Organised Crime Convention

South Africa signed the Transnational Organised Crime Convention (the Palermo Convention) in December 2000. The Department of Justice and Constitutional Development is currently processing the Convention through the constitutional procedures required to ratify the Convention.

1(f) The International Convention for the Suppressing of the Financing of Terrorism

The Government of the Republic of South Africa signed the Convention on 10 November 2001. The ratification of this convention, as well as the International Convention for the Suppression of Terrorist Bombing and the OAU Convention on the Prevention and Combating of Terrorism, are currently receiving attention.

C. Administrative Action:

1(g) Financial restrictions imposed against the Taliban

The South African Reserve Bank has circulated nine Exchange Control Circulars advising all authorised dealers that, due to UN sanctions, they are not allowed to make any funds and/or financial or economic resources available to the Taliban, as well as to Usama bin Laden and individuals associated with him. The Exchange Control Circulars have also requested all Authorised Dealers in foreign exchange to report any facilities or assets of this nature that may have been in place before the sanctions were imposed, as well as any future attempts by the private sector to enter into transactions with the prohibited parties and persons. The Exchange Control Circulars in question are No D.302 of 13 September 2000, No D.314 of 13 February 2001, No D.339 and No D.340 of 12 October 2001, No D.343 of 2 November 2001, No D.349 of 23 November 2001, No D. 351 of 3 December 2001, No D.352 of 23 January 2001 and D358 of 4 April 2002. Exchange Control Circulars No D.339, D.340, D.343, D.349, D.351, D.352 and D358 contained the details of the individuals and entities that were listed by the Security Council Committee on Afghanistan. Exchange Circular D.358 is attached as **Addendum A** to this report.

All reports received to date indicate that the authorised dealers do not have any assets of the individuals or entities stipulated in the lists of the Sanctions Committee on Afghanistan on their books, or under their control, and that no facilities were granted to them.

1(h) Financial restrictions imposed against organisations, entities and individuals identified as being associated with terrorist acts or terrorist organisations

The South African Reserve Bank has issued a list of individuals and organisations believed to be involved in the terror attacks in the USA (as provided in the US Executive Order of 23 September 2001) to all banking institutions in South Africa. In a letter dated 28 September 2001, the Registrar of Banks directed banks in terms of Section 7 (1) (a) of the Banks Act (Act No. 94 of 1990) to search their records in order to identify any relationship or involvement with any individuals or organisations whose names appeared on these lists. A similar directive was issued to all banking institutions on 13 March 2002, referring to the relevant resolutions adopted by the United Nations Security Council, pertaining to the Taliban/Al-Qaida. Information must be supplied to the Registrar of Banks by no later than 28 March 2002 and thereafter on a quarterly basis.

The results are centralised at the Exchange Control Department of the South African Reserve Bank. All the banking institutions have responded to the letter dated 28 September 2001. [illegible] reports received to date indicate that the authorised dealers do not have any assets of the individuals or entities stipulated in the lists of the Sanctions Committee on Afghanistan on their books, or under their control, and that no facilities were granted to them. The Reserve Bank Directive to all Registered Banks and Branch Offices in South Africa is attached as **Addendum B** to this report. A similar letter from the Financial Services Board to all registered long-term Insurers is attached as **Addendum C** to this report.

In addition, the South African Government published a Notice in the Government Gazette No. 22752, with Notice Number R 1036, on 12 October 2001. The notice contained the details of the individuals and entities listed in the US Executive Order of 23 September 2001 (endorsed by the United Nations on 8 October 2001). The South African Reserve Bank issued Exchange Control Circular No D.340 on 12 October 2001, informing all authorised dealers of the contents of the Government Notice. All reports received to date indicate that the authorised dealers do not have any assets of the individuals or entities stipulated in the lists of the Sanctions Committee on Afghanistan on their books, or under their control, and that no facilities were granted to them.

Furthermore, the Reserve Bank has a well-developed transaction-reporting regime, which records all cross border foreign exchange flows via Authorised Dealers in foreign exchange. Research is done on a continuous basis to trace any transactions alleged to be involved in the financing of terrorist acts. The results are communicated to the South African Police Service, who then conducts an investigation into the matter. The authorisation process at the Exchange Control Department includes an electronic system that will automatically prevent approval of applications where any of the names listed in the Circulars mentioned above are involved. The Exchange Control Department has received no applications of this nature.

All transactions that could potentially be construed as a contravention of the resolutions are investigated intensively in terms of origins of funds, ownership, trail of funds and recipients thereof.

None of the names of the individuals, groups, undertakings and entities as referred to in the list of the Sanctions Committee on Afghanistan have been identified as operating in South Africa and no action by the South African authorities has therefore been required.

Question 2: What measures have been taken to prevent the entry into or transit through South African territory of the individuals referred to in the list mentioned in paragraph 2 of resolution 1390 (2002)?

Response:

2(a) Aliens Control Act, 1991 (Act No. 96 of 1991)

The Act empowers the Minister of Home Affairs if he/she considers it to be in the public interest, to order the arrest and removal of any person who is not a South African citizen. A person may also be prohibited from admission to and residence in South Africa. The Department of Home Affairs has computerised visa and entry stop-lists to prevent the entry of prohibited persons. In order to improve the control over the cross border movement of persons and goods by air, the number of international airports has been reduced from 40 to 10. This has enabled the implementing authorities to concentrate their efforts and resources with a view to greater effectiveness. The Act is attached as Addendum G to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

2(b) International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996)

This Act facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between South Africa and foreign States. The Act provides for mechanisms to give judicial effect to requests for assistance in obtaining evidence *inter alia* for the examination of witnesses, mutual execution of sentences and the confiscation and transfer of the proceeds of crime. The Act is attached as Addendum M to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

2(c) Implementing Mechanisms

The law enforcement and intelligence agencies currently utilise the Department of Home Affairs' Movement Control Systems (MCS). The MCS is an electronic system at all border posts and airports registering arrivals and departures into and from South Africa of all individuals. To this end, all ports of entry/exit are computerised.

Individuals that may have possible links to the terrorist groups mentioned, are being stop-listed (or "flagged"). Names that are received from liaison partners, from UN lists or from Interpol are therefore loaded onto the system. This allows for immediate response from the relevant officials, should such a person enter or leave the country. The official who flagged the individuals will be contacted and appropriate action can be taken (e.g. preventing a person from entering the country or apprehending the person). Since the events of 11 September 2001, 1356 persons have been stop-listed in this regard. The major problem that exists within this system is that identification of especially Arab names is difficult, as the alphabetical translations of Arabic names appear to be phonetic and may not necessarily correspond to the information in the passports of the relevant individuals.

Improved movement control measures, including interdiction and questioning of suspicious individuals, are also being undertaken on a regular basis.

The Security and Intelligence structures in South Africa established, subsequent to the events of 11 September 2001, a national joint operational committee to co-ordinate all

operational activities and intelligence. The forum discussing the flagging of the individuals mentioned above is the inter-Departmental National Joint Operational Committee (NATJOC). This committee is constituted of all security and intelligence agencies in South Africa, as well as with the Department of Provincial and Local Government, the Department of Home Affairs, the South African Civil Aviation Authority (CAA) and the Department of Foreign Affairs. The NATJOC resorts under the Joint Operational and Intelligence Committee which on its part reports functionally to the Cabinet Cluster Committee on Justice, Crime Prevention and Security (JCPS) and nationally to the National Security Council. The NATJOC meets regularly to discuss the latest developments and ways to implement counter-terrorism measures. It also co-ordinates counter-terrorism investigations and is chaired by a senior South African Police Service officer.

Prohibited persons found in the country, having entered without the required authorisation, are arrested, charged and removed from the country in terms of the provisions of the Aliens Control Act (Act No. 96 of 1991). Any person who assists such prohibited persons with entering and/or remaining in the country without authorisation is liable to prosecution in terms of the provisions of the said Act.

Question 3: Have any of the individuals or groups mentioned in the latest Sanctions Committee on Afghanistan list been denied entry into or transit through South African territory?

Response:

3(a) Executive and administrative action on border control measures

The details of individuals associated with the Taliban as provided by the Afghanistan Sanctions Committee have been included in the visa and entry stop-lists.

In those cases where the particulars of the individuals as received from the Sanctions Committee were not sufficient or compatible with the visa and entry stop-lists, their names have been distributed manually in the form of a departmental circular to all domestic offices, Foreign Offices and ports of entry in order to identify persons who might fit the profile. Passport Control Instruction No. 83 of 2001 is attached as **Addendum D** to this report.

The South African intelligence community in monitoring the individuals or groups mentioned in resolution 1390 (2002) not only utilises the Sanctions Committee on Afghanistan list, but also lists provided by foreign liaison partners. The liaison partner lists include substantially more entries than the UN lists. After the 11 September events, the intelligence community has watchlisted nearly 1 400 individuals from these lists and subsequent internal investigations have been conducted. None of the individuals identified in the Afghanistan Sanctions Committee lists or foreign liaison partner lists has been identified positively as entering or leaving South African territory.

3(b) Border Control Operational Co-ordinating Committee (BCOCC)

In order to enhance joint actions between the intelligence community of South Africa and the Department of Home Affairs, the Border Control Operational Co-ordinating Committee (BCOCC) has been created, to implement preventative measures at borders. The BCOCC reports to the Cabinet Cluster Committee on Justice, Crime Prevention and Security. Mechanisms to control the movement of terrorists, which include the lists that are controlled by the relevant role players, are in place at ports of entry/exit. To this end all ports of entry/exit are computerised.

The Border Control Departments (South African Police Service and the South African Revenue Service) have also upgraded their security measures in respect of the flow of armaments (conventional and commercial) across borders.

Question 4: What measures have been taken to prevent the direct or indirect supply, sale and transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities?

Response:

4(a) National Conventional Arms Control Committee (NCACC)

The South African Government has since its inauguration in May 1994, committed itself to a policy of non-proliferation, disarmament and arms control which covers all weapons of mass destruction and extends to concerns relating to the proliferation of conventional weapons. On 30 August 1995 the South African Cabinet approved an Interim Arms Control Policy. The policy made provision for a ministerial controlling committee, the National Conventional Arms Control Committee (NCACC), guiding principles and guidelines, and an organisational structure for processing transactions. Professor AK Asmal, the Minister of Education, has chaired the NCACC since its inception in April 1996.

In order to codify the establishment of the NCACC as the implementing body for Government policy on conventional arms control and the control of services, a National Conventional Arms Control Bill has been drafted and has been tabled in Parliament. The Bill spells out the NCACC's organisational, control and inspection functions, including certain guiding principles and criteria that are to be taken into account when considering permit applications.

These criteria stipulate, amongst others, that the NCACC must:

a) Avoid endangering regional and international peace and stability by introducing destabilising military capabilities into a region, which could aggravate or prolong any existing armed conflicts;

b) Adhere to international law, norms and practices and the international obligations and commitments of South Africa, including United Nations arms embargoes; and

c) Avoid contributing to terrorism and crime.

It should be noted that under current procedures the NCACC already adheres to the above criteria in its consideration of permit applications. The NCACC has not received any reports of arms transfers that could be considered to be of a suspicious nature, nor has there been any contravention of any of the Parliamentary Acts referred to in the section below.

4(b) Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)

The Act prohibits any person within South Africa and elsewhere from rendering any foreign military assistance to any person unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC), in consultation with the Minister of Defence.

The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable on conviction to a fine or to imprisonment or both.

Foreign Military Assistance is broadly defined and includes military or military- related services, attempts, encouragement, incitement or solicitation. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

In Section 1 (iii), the first part of the definition of foreign military assistance reads as follows:

QUOTE
"Foreign military assistance" means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of –

(a) military assistance to a party to the armed conflict by means of –
  (i) advice or training;
  (ii) personnel, financial, logistical, intelligence or operational support;
  (iii) personnel recruitment;
  (iv) medical or para-medical services; or

(v) procurement of equipment.

UNQUOTE

In its consideration of applications related to foreign military assistance, the NCACC is guided by the Act. Any person wishing to obtain authorisation, or seeking to obtain approval of an agreement or arrangement for the rendering of foreign military assistance, needs to submit an application to the NCACC. In this regard, the Act contains criteria for the granting or refusal of such authorisations and approvals, stipulating that these may not be granted if, amongst others, the authorisation or approval would "be in conflict with the Republic's obligations in terms of international law" (Section 7(1)(a)) or if it would "support or encourage terrorism in any manner" (Section 7(1)(d)). The Act is attached as Addendum B to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

4(c) Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993)

The South African Council for Non-Proliferation (NPC) implements South Africa's non-proliferation controls. The Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993) provides the statutory authority for the NPC to control the export, import, transit and re-export of South African dual-use technology, material and equipment which could be used in the production of weapons of mass destruction and other advanced weapons systems.

Dual-use capabilities are defined by the Act as "those capabilities relating to technology, expertise, service, material, equipment and facilities which can contribute to the proliferation of weapons of mass destruction, but which could also be used for other purposes, including conventional military, commercial and educational use". These goods could form part of larger weapons systems or could be purely for civilian use.

The Act also provides the necessary legal framework for the implementation, within South Africa, of the non-proliferation and arms control obligations, which would arise out of South Africa's participation in the various export control regimes. The Act is attached as Addendum J to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

4(d) Firearms Control Act, 2000 (Act No. 60 of 2000)

In terms of Section 73 of this Act, no person may import or export firearms and ammunition without the necessary permit. The sentence for the contravention of Section 73 is 15 years imprisonment. In terms of Section 31 (1) of the Firearms Control Act, 2000 (Act No. 60 of 2000), no person may trade in any firearm or ammunition without a dealer's license. There are certain requirements which must be met before a dealer's licence will be issued and conditions may be imposed on the dealer (Sections 32 and 33) The information with regard to licenses of dealers is centralised and can be obtained from

the Registrar of Firearms. In terms of Section 124 the Registrar must establish and maintain the Central Firearms Register.

The firearms and ammunition may only be sold to a dealer or the State and if exported, must be done in terms of Section 73. In terms of Section 45 of the Act manufacturing of firearms and ammunition can only be done by a person in possession of a manufacturer's license. Sentence for contravening Section 45 is 25 years imprisonment. The Act is attached as **Addendum E** to this report.

4(e) The Armaments Development and Production Act, 1968 (Act No. 57 of 1968)

The Armaments Development and Production Act, deals with the regulation of armaments for defence purposes and not civilian purposes. In terms of this Act no armaments shall be marketed, exported, imported, conveyed, developed or manufactured except under the authority of and according to the conditions stated in a permit issued by the Minister of Defence or by a person authorised by him. The National Conventional Arms Control Committee (NCACC) executes the provisions of this Act, some of which will be replaced with the promulgation of the National Conventional Arms Control Bill. Although this Act was drafted to regulate and control the sale, marketing, conveyance, development and manufacture of weapons, the Act does provide sufficient mechanisms to counter the unauthorised use of armaments for purposes such as terrorism.

The term "Armaments" includes any vessels, vehicles, aircraft, bombs, ammunition or weapons with a calibre of 20mm and more, or any substance, material, raw material, components, equipment system, articles or technique of whatever nature capable of being used in the development, manufacture or maintenance of armaments or for defence purposes or other purposes determined by the Minister with the concurrence of the Minister of Economic Affairs.

The sentence for the contravention of this Act is a fine not exceeding ten thousand Rand or imprisonment for a period not exceeding ten years or both a fine and imprisonment. The Act is attached as Addendum K to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S/2001/1281).

4(f) Civil Aviation Offences Act, 1972 (Act No. 10 of 1972)

The Civil Aviation Offences Act, 1972 was adopted by Parliament to *inter alia* give effect to The Hague, Tokyo and Montreal International Aviation Security Conventions. The Act has been prepared for amendment in order to create graver penalties for infringements to the Act, and by analogy to the relevant Conventions and is in the final stages of preparation for publication. This Act applies also to the Civil Aviation Safety Regulations of 1981, which in turn gives powers to the National Aviation Security Committee (NASC) which is chaired by the Commissioner for Civil Aviation to advise the Minister on any matters relating to aviation safety and the National Safety Plan (NSP). The interim NSP has been completed and lies with the Minister of Transport for approval. The NSP covering the requirements of the ICAO Annexure 17 (International

Minimum Security Standards and Recommendations) has been completed. The Act is attached as Addendum I to South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S 2001 1281).

In addition to the legislation mentioned above, South Africa has a comprehensive legislative framework in which to prosecute terrorist acts. This legislative framework is reflected in South Africa's National Report pursuant to resolution 1373 (2001) to the Counter-Terrorism Committee (S 2001 1281).

SECTION B

1. ADDENDA ATTACHED TO THE NATIONAL REPORT *

- Exchange Circular D.358 (Addendum A)
- Reserve Bank Directive to all Registered Banks and Branch Offices in South Africa (Addendum B)
- Financial Services Board Directive to all registered long-term Insurers (Addendum C)
- Passport Control Instruction No. 83 of 2001 (Addendum D)
- Firearms Control Act. 2000 (Act No. 60 of 2000 (Addendum E)

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* The addenda are on file with the Secretariat, room S-3055, and are available for consultation.

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Security Council

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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2002 from the Permanent Mission of Slovakia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Slovak Republic to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and has the honour to transmit the report of the Slovak Republic on the implementation of Security Council resolution 1390 (2002) (see annex).

02-34427 (E) 240402

Annex to the note verbale dated 16 April 2002 from the Permanent Mission of Slovakia to the United Nations addressed to the Chairman of the Committee

Paragraph 6 of the UN Security Council resolution 1390 (2002) of 16 January 2002 requests all States to report to the Committee established pursuant to resolution 1267 (1999), on the steps they have taken to implement the mandatory measures contained therein.

The submitted Report of the Slovak Republic has been prepared in conformity with the guidelines of the Committee. To avoid duplication with the report prepared for the CTC, the present Report focuses on new legislative enactments and administrative measures and on newly established facts. Measures in italics are mentioned only in a concise form here, since they have been presented in more detail in the report prepared for the CTC.

1. All legislative and/or administrative measures to freeze the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list 2000 mentioned in paragraph 2 of resolution 1390(2002).

As stated in the report for the CTC, *the following legislative measures make it possible to freeze funds, financial assets or economic resources of individuals and organizations subject to sanctions:*

a) Banking Act No. 483/2001 of 5 October 2001 whose Article V amends Foreign Economic Relations Act No. 42/1980, namely by means of implementing the provisions of the Article 56a) International Sanctions imposed by the UN Security Council. In accordance with these provisions, the Slovak Government issued on April 10, 2002 a Decree which enables to freeze funds and other financial assets of individuals, groups, undertakings and entities referred to in the list created pursuant to resolutions 1267(1999) and 1333(2000). (This Decree enables to freeze funds and deposits owned by the UNITA representatives and their relatives, as well).

b) the Code of Criminal Procedure, namely its Articles 78, 79 and 79c)

c) the Penal Code, namely its Article 7 on preparation of serious crime and Article 10 on involvement in an offense completed or in an attempt to commit an offense.

On 3 April, the Government approved a draft amendment to the Penal Code which provides for the fulfilment of obligations pursuant to Article 2 paragraphs 1 to 5 of the International Convention on the Suppression of the Financing of Terrorism. The amended Penal Code provides, *inter alia*, in its Article 73 for the confiscation of assets that could be used to finance terrorism. Article 94 introduces a new crime of terrorism, Article 89 paragraph 28 defines a terrorist group and Article 185a) adds criminal liability for participation in a terrorist group. The Code is expected to take effect on 1 July 2002 following its adoption in Parliament.

Furthermore, the use of financial assets for the financing of terrorism may be prevented especially through the requirement to report unusual business transactions laid down in Article 7 of the *Money Laundering Act No. 367/2000*. These transactions are reported to the Financial Police Bureau by "obligated persons" under Article 2 of the aforesaid Act.

A draft law amending *Money Laundering Act No. 367/2000* (prepared by the Ministry of the Interior) is currently in the legislative process. Changes to be introduced by the draft include a modification of the reporting requirement – i.e. the financial intelligence unit of the

Slovak Republic (Financial Intelligence Department within the Financial Police Bureau) must be reported not only "unusual" business transactions that give rise to suspicion of legalizing proceeds of crime, but also those that give rise to suspicion of the financing of terrorism. The adoption of the law is expected, in expedited legislative procedure, before the end of the current term of the Parliament, i e. within the first half of 2002.

Administrative measures include also steps taken by the Financial Police Bureau to draw up the lists of natural and legal persons, organizations, foundations and associations (i e. publicly accessible lists, but also those obtained from sources outside of the sector) and make them available to banks and subsidiaries of foreign banks through the Association of Banks of the Slovak Republic. As far as specified accounts are concerned, steps have been taken to obtain information about potential unusual business transactions (as a rule, they are unusual financial transactions). Banks and their subsidiaries were urged to pay increased attention to these accounts and to inform financial police forthwith of any relevant observation. Under *Article 9 of Act No. 367/2000* financial police may make the obligated persons, defined in Article 3a), put an unusual business transaction on hold for a 48-hour period. Where substantiated, this legal measure may be associated with the freezing of an account by a public prosecutor pursuant to *Article 79c of the Code of Criminal Procedure*.

A draft law on the implementation of international sanctions for maintaining the international peace and security is currently in the legislative process. The purpose of this law is to create a comprehensive legal framework enabling the Government of the Slovak Republic to consistently and effectively implement international sanctions imposed by the UN Security Council and the EU. The law provides for implementing sanctions in the fields of trade and non-financial services, financial services, transport, postal service and telecommunications, technical infrastructure, science, technology, cultural and sports relations. The law is expected to take effect on 31 July 2002. Its enactment will repeal *Article 56a) of Foreign Economic Relations Act No.42/1980 as amended by Act No. 483/2001*.

2. If the authorities of a State have identified and frozen funds and other financial assets or economic resources of individuals, groups, undertakings and entities as referred to in the list, they should indicate to the Committee relevant information such as type of assets frozen, account numbers and monetary value of assets frozen.

No concrete accounts of natural or legal persons subject to UN sanctions under SC resolution were frozen in the Slovak Republic to date, as no accounts qualifying for sanctions have been identified.

The Ministry of Finance's Department of State Final Account verifies in the process of making payments not only substantive and formal requirements of the orders to pay, but also account numbers by tallying them against the list of accounts of terrorist organizations. None of the verified effected payments raised suspicion.

3. All measures taken to prevent entry into and or the transit through their territories of the individuals as referred to in the list mentioned in paragraph 2 of resolution 1390(2002).

The list in question and its updated versions are immediately submitted to all the consulates of the Slovak Republic abroad that issue Slovak visas and, through the Ministry of the Interior, to alien police departments at border crossing points.

Under an Order issued by the President of the Police Corps, reinforcements were introduced mainly in the performance of police duties, patrols, and measures were taken to perform checks in areas with increased incidence of aliens from relevant areas. Stricter personal and vehicle checks are performed in conjunction with customs authorities at border crossing points. Patrols were reinforced to increase protection of the State border. Security measures at public airports were tightened.

Information concerning areas with potential presence of illegal migrants is collected and analyzed on a regular basis.

As far as possible, checks are performed over sites and structures that are prone to penetration or concentration of illegal migrants.

Operational and investigative units collect information on terrorist groups and relevant individuals involved in the commission of organized crime.

The data are immediately verified, documented, entered in criminal information records and analyzed with a view to covering future needs or transferred to competent authorities involved in criminal procedure.

Alien police officers at border crossing points verify the data concerning aliens on their entry to our territory against relevant records (including records on terrorists).

Border crossing points are equipped with the AFIS system (automated fingerprint identification system). Fingerprint identification is performed in conformity with Police Corps Act No. 171/1993 Coll. Illegal migrants after their entry to the territory of the country (through the green border) are subjected to a security check against the records on terrorists through the closest border crossing point.

Fingerprints may be taken also from aliens applying for a refugee status (Article 5 paragraph 4 of Refugees Act No. 283/1995).

Under Order No. 50 of 11 September 2001 issued by the President of the Police Corps, special measures were taken by the Border and Alien Police Department of the Police Corps in connection with terrorist attacks against the United States.

However, the aforesaid Order is confidential (gathering of information on potential perpetrators and/or organizers of terrorist attacks, monitoring of security situation in the Slovak Republic especially in relation to the possession of weapons, explosives and ammunitions, protection of strategic structures and monitoring of interest population groups that could have a link to terrorist activities).

Under the draft of a new asylum law, it is possible to deny granting asylum to an individual who is reasonably suspected of having committed a serious non-political criminal offense outside of the territory of the Slovak Republic prior to applying for asylum.

Application of this exemption clause is highly relevant in the current international situation in connection with the fight against terrorism and organized crime, and meets also the obligations stated in paragraph 8 of UN SC Resolution 1390/2002. The new Asylum Act is expected to enter into effect on 1 January 2003.

4. All the measures taken to prevent the direct or indirect supply, sale or transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned and technical advice, assistance, or training related to military activities.

Amended Trade in Military Materiel Act No. 179/1998 came into effect on 1 February 2002. The amendment removed the legislative gap in the relevant Act under which it was possible to import to and export from the Slovak Republic military materiel and weapons for refurbishing without requiring a license. The amendment has significantly tightened requirements for trading in military materiel.

Customs administration of the Slovak Republic carries out customs surveillance with maximum controls in imports, exports, transit or other handling of arms, military materiel of all types and equipment, illegal transport of radioactive and other highly dangerous materials. Since 1 March 2002, Customs Administration of the Slovak Republic has its representative among the members of the Licensing Commission operating within the Ministry of Economy which issues licenses on imports, exports and other handling of military materiel.

On 1 February entered into effect the Requirements for and Control of Imports, Exports and Intermediary Activities related to Goods and Technologies subject to International Control Regimes Act No. 26/2002 Coll. The law deals with the prevention of unlawful sales, supplies, etc. of dual-use goods. It superseded the Handling Certain Types of Goods and Their Control Act No. 547/1990. The law consistently complies with EU regulations and other legal acts in this area.

Stricter controls of military materials and dual-use goods will be introduced also with the launching of the TRACKER communication and information system, provided free of charge by the US Government. The TRACKER system will make it possible to process and evaluate information on individual business transactions and direct communication among the sectors concerned.

The Ministry of Economy of the Slovak Republic is working, in cooperation with the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defense and the Customs Directorate, on a broader amendment to Trade In Military Materiel Act No. 179/1998 Coll.. The objective of the amendment is to revise the entire philosophy of controlling the movements of military materiel, and to serve as a sufficiently powerful legislative instrument for competent authorities in asserting security and foreign policy interests of Slovakia. The amendment will, *inter alia*, regulate the transit of military materiel through the territory of Slovakia, related intermediary activities and cooperation of state administration bodies in this area.

5. Ad paragraph 8 of resolution 1390(2002) .

The Department for the Fight against Terrorism within the Criminal and Financial Police Administration's Office on Organized Crime of the Presidium of the Police Corps also runs a list of natural and legal persons designated as terrorist, suspect of terrorism, or aiding terrorism. On the basis of the aforesaid list, as well as other systematically collected information, the Department has started to perform – in cooperation with relevant services of the Presidium of the Police Corps– checks on individuals from the list and other natural or legal persons or other entities connected with them with a view to establishing whether they conduct any activities in the territory of the Slovak Republic. Evaluation of steps and measures taken up to the present leads to the conclusion that no such entities are active in the territory of the Slovak Republic. In this regard, the Office of Organized Crime of the Presidium of the Police Corps will work in close conjunction with the Financial Police Bureau of the Criminal and Financial Police Administration of the Presidium of the Police Corps.

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Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 16 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Denmark to the United Nations addressed to the Committee

Upon instructions from my Government, I have the honour to transmit to the Committee established by the Security Council pursuant to resolution 1267 (1999) the Danish report on resolution 1390 (2002) (see annex).

My Government stands ready to provide the Committee with further reports or information, as necessary or if requested to do so by the Committee.

I would be grateful if you would have the text of the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Ruben **Madsen**
Ambassador
Chargé d'affaires a.i.

02-34331 (E) 250402

Annex to the letter dated 16 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Denmark to the United Nations addressed to the Committee

Report submitted by Denmark pursuant to paragraph 6 of Security Council resolution 1390 (2002) of 16 January 2002

Introduction

In Security Council Resolution 1390 (2002) adopted 16 January 2002 the Security Council called upon all States to report to the Committee established by the Council pursuant to resolution 1267 (1999) - no later than 90 days from the date of the adoption of the resolution.

The following report covers actions undertaken by the Danish Government as well as actions taken within the framework of the European Union.

Operative Paragraph 2

Sub-paragraph (a) - Freezing of funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensuring that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, by their nationals or ny any persons within their territory

In order to implement UNSCR 1267 (1999) and UNSCR 1333 (2000), on 6 March 2001 the European Union adopted a Regulation (EC Council Regulation 467 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan). The Regulation provides for the freezing of all funds and other financial resources belonging to any natural or legal person, entity or body designated by the Sanctions Committee (established pursuant to UNSCR 1267 (1999)) and listed in one of the annexes to the Regulation. As provided for under the terms of the Regulation, the European Commission has amended the list annexed to the Regulation on the basis of decisions made either by the Security Council or its Sanctions Committee, adding new persons and entities to the list. Some of these amendments target Osama bin Laden and the Al-Qaida network.

According to EU Regulation 467/2001, the financial institutions in Denmark have been requested to inform the competent authority if any of the persons and entities listed in the annexes to the regulations are known to the financial institutions in order to freeze funds, assets and resources. The financial institutions have replied that they at present have not identified any of the persons and entities targeted and therefore no accounts have been frozen.

In order to implement UNSCR 1390, The European Union will soon adopt a common position and a Regulation, which will provide for the freezing of funds and other financial assets or economic resources of individuals, groups, undertakings and entities referred to in the list created pursuant to resolutions 1267 (1999), 1333 (2000) and 1390 (2002).

Sub-paragraph (b) – Preventing the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified

Denial of residence permits to aliens because of serious offences committed in Denmark

Legislation in place

The Danish Aliens Act contains a number of provisions securing that terrorists are denied safe haven in Denmark.

According to the Danish Aliens Act article 10 aliens who are convicted for offences committed outside of Denmark may be denied residence permit. Furthermore – if the offence has resulted in a court judgement, court order or decision ordering the alien to be expelled – offences committed in Denmark may lead to denial of residence permit. The said offences include offences involving terrorism.

The general system in the Aliens Act regarding expulsion by judgement (section 22(i)-(iii), section 23 and section 24) can be described as follows:

(a) An alien who has been lawfully staying in Denmark for seven years or more can be expelled if he or she is sentenced to a minimum of four years' imprisonment. If the alien has been sentenced in respect of several counts, or if the alien has previously been sentenced to imprisonment in Denmark, the alien can be expelled if he or she is sentenced to imprisonment for at least two years;

(b) An alien who has been lawfully staying in Denmark for three years or more, but less than seven years, can be expelled if he or she is sentenced to a minimum of two years' imprisonment. If the alien has been sentenced in respect of several counts, or if the alien has previously been sentenced to imprisonment in Denmark, the alien can be expelled if he or she is sentenced to a minimum of one year's imprisonment.

(c) An alien with less than three years' lawful residence can be expelled if he or she is sentenced to a suspended or non-suspended custodial penalty

The conditions mentioned concerning the length of the term of imprisonment are minimum conditions in the sense that in all cases the courts must weigh the alien's personal circumstances and ties with Denmark against the seriousness of the crime (section 26). In this connection, such circumstances as the duration of the alien's stay in the country, the alien's health and the consequences of the expulsion for the alien's close relatives living in Denmark are considered

Concerning recognised refugees a decision on expulsion can only be enforced in accordance with the conditions applying to aliens with a lawful residence of seven years or more, or if the recognised refugee is sentenced in respect of a form of crime falling within the extended provision for expulsion (see below)

Enforcement of the decision of expulsion in the form of return cannot be carried out if the alien is thereby returned to a country where the alien risks persecution as described in the Convention relating to the Status of Refugees (see in this respect section 31 of the Aliens Act).

In 1996 an amendment of the Aliens Act was made, whereby a provision was inserted in the Aliens Act allowing the courts to expel an alien who is sentenced to a custodial penalty because of a drug offence. In 1998 was inserted a number of other serious types of crime in the same extended provision for expulsion according to which, basically, expulsion may be enforced where the alien is sentenced to a custodial penalty regardless of the length of the alien's stay in Denmark. The crimes concerned include murder, rape, aggravated assault and battery, robbery, offences against property of a particularly aggravated nature, people-smuggling, violence against persons in public service, arson and hijacking of planes and ships

There was also inserted a provision in the Aliens Act, according to which expulsion can be enforced in such cases unless the humanitarian considerations mentioned in the Aliens Act, in particular the alien's personal circumstances and ties with Denmark, make expulsion decisively inappropriate

The provision means that said considerations can only exceptionally prevent expulsion. A person will not be expelled if expulsion results in a violation of obligations under international human rights law.

Furthermore, an alien may be expelled administratively when this is found to be necessary for considerations of national security (section 25 of the Aliens Act).

Legislation contemplated

In this field, the Danish Government has put forward in parliament a Bill whereby the following changes of the Aliens Act is proposed.

The Danish Government contemplates a tightening up of the provisions in the Aliens Act regarding denial of residence permit because of offences committed outside of Denmark or in Denmark. For instance, it should under no circumstances be possible to obtain residence permit – as a refugee or on other grounds – if the exclusion clauses in article 1 F of the 1951 Convention relating to the Status of Refugees apply or if an alien is considered as a danger to the society or is considered to be a danger to the security or health of the Danish population.

The provisions regarding expulsion by judgement will be changed in order to – regardless of the length of the alien's stay in Denmark – expel aliens who commit offences with a view to overthrow or subvert Danish society or democracy. Aliens who are a danger to the security or health of the Danish population are also affected by this change.

The provisions regarding administrative expulsion will be changed. The change means that aliens who are considered as a danger to the society as well as aliens who are considered to be a danger to the security or health of the Danish population can be administratively expelled.

Furthermore, the Danish prohibition of refoulment in the Aliens Act section 31 should be tightened in order to make it possible to enforce decisions of exclusion and expulsion in all cases – unless it would be contrary to Denmark's obligations under the 1951 Geneva Convention relating to the Status of Refugees or other international conventions.

Border controls, refusal of entry and issuance of visa

Legislation in place

After Denmark has entered the practical Schengen co-operation border control is only carried out at the external Schengen borders in Denmark. The control of the external borders is regulated in the Danish Aliens Act which has been amended to meet the requirements set in the Schengen acquis.

According to the Danish Aliens Act an alien not issued with a residence permit for Denmark may be refused entry if reasons of public order, relations with foreign powers or reasons of security or health of the Schengen countries indicate that the alien should not be allowed to stay in Denmark.

Such aliens may also be denied a visa for entry into or transit through Denmark.

Administrative steps taken

Following the terror acts on 11 September 2001, the control of the Danish borders has been carried out with a special awareness towards the fight against terrorism.

Legislation contemplated

The Danish Government contemplates to change the Aliens Act (see above) to the effect that more aliens – including aliens having committed terrorist acts – will be reported to the Schengen Information System as unwanted. The reporting to the Schengen Information System will improve possibilities for other members of the Schengen co-operation to identify such aliens in case they travel to a Schengen member state and are stopped by the police. Furthermore, aliens reported as unwanted in the Schengen Information System may be denied access to the Schengen area and will be denied a visa for entry into or transit through Denmark.

A number of new provisions are contemplated to be added into the Aliens Act in order to facilitate the possibilities for information exchange (regarding aliens having applied for residence permits or visas etc. in Denmark) between the immigration authorities, the intelligence services and the prosecution authority. The exchange of information should, among other things, ensure that aliens

posing a security risk *vis-à-vis* Denmark or countries with close ties to Denmark are identified in order to take appropriate precautions

Appropriate measures before granting refugee status

Legislation in place

The Danish immigration authorities are, during the process of determining whether a person qualifies for refugee status, examining whether the exclusion clauses in article 1 F (a)-(c) of the 1951 Convention relating to the Status of Refugees are applicable. If affirmative, refugee status will be denied. In this context, article 1 F (b) of the Convention, according to which the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a serious non-political crime, is of particular relevance.

With regard to denial of residence permits to refugees – as well as other aliens – because of serious offences committed in Denmark see the comments above.

Legislation contemplated

See above under "Denial of residence permits to aliens because of serious offences committed in Denmark" – section on contemplated legislation.

Abuse of refugee status

Legislation in place

According to the Aliens Act, applications of asylum are in first instance examined by the Danish Immigration Service and – in case of a negative first instance decision – the Refugee Board.
In the process of examining whether an asylum seeker should be excluded from refugee status as a consequence of terrorist acts the Danish Immigration Service and the Refugee Board can employ all relevant information. For instance: Information from the applicant, all accessible background information on a particular country, information from the intelligence services, information from Interpol etc.

Administrative steps taken

After the terror acts on 11 September 2001, the Danish Immigration Service will carry out personal interviews in all cases – in order to examine the background of these aliens very closely and, where necessary, exchange information with the intelligence services.

Legislation contemplated

A number of new provisions are contemplated to be added into the Aliens Act in order to facilitate the possibilities for information exchange (regarding aliens having applied for residence permits or visas etc. in Denmark) between the immigration authorities, the intelligence services and the prosecution authority. The exchange of information should, among other things, ensure that aliens posing a security risk to Denmark or countries with close ties to Denmark are identified in order to take appropriate precautions.

The Danish Government also contemplates to improve the Police's possibilities – in the context of an investigation of an offence or international searches – to compare fingerprints with fingerprints taken from asylum seekers and to pass on fingerprints from asylum seekers to police authorities abroad.

Sub-paragraph (c) - Preventing direct and indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flags vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities

According to Article 5 of Regulation 467/2001, it is prohibited to grant, sell, supply or transfer, directly or indirectly, technical advice, assistance or training related to the military activities of armed personnel under the control of the Taliban, to any natural legal person or any entity or body in Taliban-controlled Afghanistan, or to any person, entity or body for the purpose of any business

carried on in, or operated from Taliban-controlled Afghanistan. As explained under Operative Paragraph 2, sub-paragraph (a), the European Union expects to adopt a Common Position and a Regulation soon, which will repeal Regulation 467/2001 and implement UNSCR 1390 (2002).

At present, the ban on export of weapons and related material in Article 2 (c) of UNSCR 1390 (2002) is implemented through national legislation. According to the Order on the Weapons and Explosive Acts § 6, it is prohibited to export the following items without a licence or authorisation from the Minister of Justice or the person appointed by the minister for that purpose:

1) Weapons of any kind with the exception of hunting weapons.
2) Ammunition, with the exception of ammunition for hunting purposes.
3) Equipment for land, sea or air warfare.
4) Machinery, instruments, apparatus and other means of production used primarily for the manufacture or maintenance of weapons, ammunition or munitions, and parts and accessories for such means of production.
5) Explosives covered by the ban in § 1, Subsection 2.

Thus, export of weapons and other military products and technology is subject to a general prohibition, which can be lifted by a licence issued by the Minister of Justice or a person appointed by the minister for that purpose. A licence requires sufficient documentation ensuring that the receiving State does not have any objections to importing the weapons in question.

In accordance to UNSCR 1390, no licences are issued to any of the individuals, groups, undertakings and entities referred to in the list created pursuant to resolution 1267 (1999), 1333 (2000) and 1390 (2002), which is updated regularly by the Committee established pursuant to 1267(1999).

Export control on dual-use products

In the field of export control on dual-use products, Denmark has strengthened its efforts in the export control area on the following points:

- Denmark supports every initiative to include combat of terrorism into the objectives of the export control regimes (Wassenaar Arrangement, MTCR, NSG and Australia Group)
- With regard to licensing dual-use items for exports, more in depth scrutiny is now being exercised by the authorities in order to avoid that sensitive goods fall into the hands of terrorists or terror organisations
- In the area of legislation a bill has been submitted to Parliament proposing that the present limit for imprisonment of 2 years should be increased to 6 years in serious cases of infringement of the export control legislation

Operative Paragraph 8 – Steps to enforce and strengthen through legislative enactments or administrative measures the measures imposed under domestic laws or regulations to prevent and punish violations of the measures referred to in paragraph 2 - and results of all related investigations or enforcement actions.

Contemplated legislation

On 13 December 2001 the Danish Government presented a legislative package (four Bills) to the Danish Parliament containing a broad range of initiatives aimed at combating terrorism and the financing of terrorism – including all the legislative amendments, which are necessary to comply with international standards and requirements after the events of 11 September. The bill contains a new separate provision on terrorism, which – unlike the present section 114 of the Danish Criminal Code – is not limited to terrorist organisations which are based in Denmark or otherwise linked to Denmark or Danish interests. The proposed provision carries a penalty of up to life imprisonment. The bill also contains separate provisions on the financing of terrorism, which carry a penalty of imprisonment up to 10 years. The bill contains all the amendments necessitated by the International Convention for the Suppression of the Financing of Terrorism and the UN Security Council Resolution 1373 (2001).

The Danish Government will take steps to ensure that the bill will be implemented in Greenland and the Faroe Islands as soon as the bill has been adopted by the Parliament.

For more detailed information on the legislative package, please see the report submitted to the Counter Terrorism Committee pursuant to paragraph 6 of Security Council Resolution 1373 (2001) by Denmark

Investigations and enforcement actions

Regarding related investigations and enforcement actions, the Danish police investigates thoroughly all relevant information submitted to the police which might have relation to any of the individuals, groups, undertakings and entities referred to in the list created pursuant to resolution 1390 (2002)

So far these investigations have not resulted in any enforcement actions

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Note verbale dated 16 April 2002 from the Permanent Mission of the Republic of Bulgaria to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of Bulgaria to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and, as requested in paragraph 6 of Security Council resolution 1390 (2002) and in accordance with the Chairman's note dated 7 March 2002, has the honour to transmit herewith the national report of the Republic of Bulgaria on the measures that have been taken to implement resolution 1390 (2002) (see annex).*

The Permanent Mission of the Republic of Bulgaria to the United Nations has the honour to kindly request that the report is circulated as a document of the Security Council.

* The enclosure referred to in the report is on file with the Secretariat, room S-3055, and is available for consultation.

02-35147 (E) 060502

Annex to the note verbale dated 16 April 2002 from the Permanent Mission of the Republic of Bulgaria to the United Nations addressed to the Chairman of the Committee

Republic of Bulgaria

National report to the Security Council Committee established pursuant to resolution 1267 (1999) on the measures that have been taken to implement Security Council resolution 1390 (2002)

Bulgaria is fully committed to cooperating with the Committee established by the Security Council pursuant to resolution 1267 (1999) to implement and enforce, inter alia, the mandatory measures contained in resolution 1390 (2002).

In implementing resolution 1373 (2001) the Republic of Bulgaria has submitted its National Report on its counter-terrorism activities to the Security Council Counter-Terrorism Committee on December 24th, 2001. The report covers in detail all measures that the country either has taken or will take in the fight against terrorism[1].

With the present report the Bulgarian Government would like to bring to the attention of the SC Committee, established pursuant to resolution 1267 (1999), the information related both to the national implementation of res. 1390 and to additional legislative and administrative measures taken by the Government in the fight against terrorism following the submission of the National Report on the implementation of resolution 1373 (2001).

Legislative action

Presently legislative enactments and administrative measures are being taken to freeze and prevent the activities of individuals and organizations, whose funds and assets can be used to finance terrorists or terrorist groups.

Legislation in force

The Republic of Bulgaria **has ratified the International Convention for the Suppression of the Financing of Terrorism** of 1999[2]. By ratifying this Convention the Republic of Bulgaria has become a Party to all twelve UN conventions against terrorism.

On March 25, 2002, the Government of the Republic of Bulgaria adopted the necessary enabling legislation in order to implement Security Council resolution 1390. The adopted to this effect **Council of Ministers Decree No. 65** has modified and introduced amendments to the previous Decree[3] on the implementation of SC resolution 1267 (1999). As of April 2, 2002, Bulgarian domestic laws satisfy the requirements of resolution 1390.

The provisions of operative paragraph (op) 2, sub-paragraph (a), of resolution 1390 are implemented in paragraphs §1 and §3, point 4 of the Council of Ministers Decree No. 65/2002.

The provisions of op 2, sub-paragraph (b), of res. 1390 are implemented in paragraph §3, point 6 of Decree No. 65/2002.

[1] The report has been published as a UN document № S/2001/1273.

[2] The ratification law on the Convention has been promulgated in the State Gazette, issue No. 11/31.01.2002.

[3] Decree of the Council of Ministers No. 39 of 2000.

The provisions of op 2, sub-paragraph (c), of res. 1390 are implemented in paragraph §3, point 1 of Decree No. 65/2002.

The provisions of the Decree No.65/2002 will be accordingly introduced to the List of countries and organizations, against which a ban or restrictions on the sales or delivery of arms and related equipment were imposed under the UN Security Council resolutions, EU and OSCE decisions.

An English translation of Decree No. 65 is enclosed.

Planned legislative measures

Bearing in mind the connection between the implementation of res. 1373 and res. 1390 the following planned legislative measures are relevant to further improve the enactment of the latter:

1. A draft Law on **Amendments to the Criminal Code** has been drawn up in the beginning of 2002. This draft is of special importance due to the inclusion of a legal definition of the term "terrorism". The draft inserts a special text into to the Criminal Code (article 108a) penalizing terrorism and acts of financing of terrorism as *separate crimes*. The draft amendments to the Criminal Code also provide for punishment for setting up, leadership and participation in a terrorist group; preparation for commitment of a terrorist act; instigation to perpetrate terrorism through speech and terrorist threats. The draft provides for confiscation of the property of those committing terrorist acts and those financing such activities, as well as confiscation of funds and assets used for financing of terrorism. The Council of Ministers has already approved the draft Law on Amendments to the Criminal Code and its consideration and approval by the National Assembly is forthcoming.

2. The elaboration of a draft Law on **the Measures against Financing of Terrorism** is at its final stage. This draft defines the measures against financing of terrorism, the organization and control required for their implementation and the administrative and legal responsibility in case of breaches of the law. The drawing up of this draft is a part of the measures taken in the execution of resolution 1373 (2001). The Council Regulation[4] No. 2580/2001 on the specific restrictive measures in the fight against terrorism to be enforced against individuals and legal entities was also taken into account. The Council of Ministers is expected to approve by the end of April 2002 the draft Law on the Measures against Financing of Terrorism and to submit it to the National Assembly for consideration and adoption.

3. On 4 February 2002 a draft Law on **Amendments to the Law on Foreign Trade in Arms and Dual-use Goods and Technologies**[5] was submitted for consideration to the National Assembly. The draft enlarges the scope of the Law, making it more precise, introducing licenses for brokering activities and defines the cases where a permit is necessary for exporting arms and dual-use goods or technologies. The draft also provides for a substantial increase of sanctions in case of breach of law.

4. A draft Law on **Amendments to the Law for Control of Explosives, Firearms and Ammunitions** was approved on 19 February 2002 by the Council of Ministers The purpose of the draft is to improve the system in terms of issuing licenses for activities with explosives, firearms and ammunitions, to introduce a strict and efficient system of control (including follow-up control) and to provide for clear and

[4] Regulation of the EU Council of 27 December 2001.
[5] State Gazeta, issue No.102/1995.

concise rules for such activities under the law in force. The modifications include introduction of a Single Automated Central Register as part of the police force with the aim to uncover, prevent and suppress crimes. The draft law has been submitted to the National Assembly and its adoption is expected during the second half of 2002.

5. In the draft **Commercial Navigation Code,** prepared by the Ministry of Transport and Communications, the provisions regulating the procedures for employment of foreign citizens on Bulgarian ships have been made more precise. Issuance of permits in such cases is to be done by the Minister of Transport and Communications. The texts pertaining to the issuance of authentication for work certificates to foreign citizens have been made more precise. These texts provide for inquiries to the administration in charge of issuing of the document regarding its authenticity.

6. At the end of March 2002 the Ministry of Interior prepared a draft Strategy on Crime Suppression, which has become the basis for elaboration of a National Strategy to counter crime.

Executive action

In addition to enacting the necessary legislation, the Bulgarian Government established shortly after the terrorist attacks on the United States on 11 September 2001 an inter-ministerial working group on anti-terrorism under the auspices of the Ministry of Interior and the Ministry of Justice to closely monitor measures taken to combat terrorist acts. The group is entrusted with examining the legal steps and law enforcement initiatives, including those concerning financial aspects that are being taken by other States and that should also be considered by Bulgaria. Priority is given to the ongoing processes within the United Nations and the European Union.

The group comprises representatives from: Ministry of Interior; Ministry of Justice; Ministry of Foreign Affairs; Ministry of Economy; Ministry of Finance; Ministry of Transport and Communications; Agency for Refugees; National Service "Border Police"; Office of the Chief Prosecutor; National Police Service Directorate; National Security Service; National Service for Combating Organized Crime. The members of the group exchange information related to their respective areas of responsibility and advice on new steps to be taken to fulfill international obligations related to the fight against terrorism.

Since the adoption of resolution 1390 the group is entrusted with its effective enforcement by enhancing capacity to collect and deal with relevant information or evidence concerning suspicious funds and persons. These administrative and practical measures reflect the high priority being given to the effective implementation of resolution 1390.

The actions of the Republic of Bulgaria to identify and freeze the activities of persons and organizations, whose funds can be used to finance terrorists or terrorist groups are being organized and enacted mainly by the Bulgarian National Bank (BNB) and the Financial Intelligence Agency (FIA). In implementing the relevant resolutions of the UN Security Council BNB, in cooperation with FIA, has begun to conduct immediate check-ups and to take concrete steps since October 2001.

The relevant to res. 1267 international lists of persons and entities have been sent to all trade banks - Bulgarian and foreign, operating on Bulgarian territory, as well as to all specialized services of the Ministry of Interior and Customs Agency. To date over

900 individuals, groups, organizations, foundations and entities on the lists have been checked for bank accounts, financial assets and economic resources, owned or controlled, directly or indirectly, on our territory. An analysis is carried out on the incoming information about established similarities or matches between names from the lists. So far, the reported cases are based on partial similarities (a minimum of two out of three names) on the lists, together with marching birth dates and/or nationality and evidence of bank transactions related to such individuals or organizations.

Services with police functions at the Ministry of Interior continue to execute the measures to uncover and prevent terrorist activities on the territory of the Republic of Bulgaria.

Special working groups have been set up with the aim to:

- improve results in the suppression of terrorism;
- collect, sum up and analyze the information received by the police forces;
- coordinate and improve the efficiency of interaction between the State agencies.

By their nature these activities are related to strengthening the border patrol forces and the control over the issuance of identification documents for foreign citizens residing in the country.

In order to set up stricter regulations and control over individuals who apply for permit to purchase or own firearms, practical measures have been undertaken to introduce an information system "Control over Dangerous Means". A system of methods and technologies for marking explosives is at its final stage of completion. Legislative amendments to the laws have also been proposed.

Measures taken to strengthen the protection and the check-in regime in guarded areas /Nuclear Power Station "Kozloduy", "Lukoil Neftohim Burgas Inc., etc./ continue to be implemented, as well as those concerning foreign institutions and offices. An optimal security in view of ensuring safety of airports, flights, railway stations and other places of mass public access is being maintained.

The active exchange of information through the Rapid Reaction System within the frames of CIREFI[6] has continued in 2002 in form of direct interaction to counter illegal migration nets.

In order to raise the specialized and professional level of training of the police officers in the fight against terrorism and in implementation of the Program for training of the officials of the Ministry of Interior to suppress the international terrorism, since the beginning of February 2002 a thematic training plan was approved. The purpose of this plan is to train the police officers in meeting obligations stemming from the international law agreements, to which the Republic of Bulgaria is a Party, for suppressing and punishing different forms of terrorism, the relevant EU law, the legislative acts of the Republic of Bulgaria related to the prevention of terrorism, bilateral and multilateral international agreements providing for counter-terrorism cooperation, as well as in carrying out specific tasks and activities by the Services of the Ministry of Interior in the fight against international terrorism.

[6] Centre d'information, reflexion et échange dans le domaine des frontières et de l'immigration.

Within the Ministry of Transport and Communications there is an ongoing project entitled "Building and Introducing a Corporate System for information security integrated into INTRANET, the Bulgarian Telecommunications Company-PLC".

This project has two phases. Up to now Phase 1 has been implemented. It includes:

- installing software security;
- introduction of a system for detecting breaches of access to information resources;
- complete corporate anti-virus defense with a centralized WEB-based management and means for protection of virtual private nets.

Phase 2 is in a process of implementation. It includes:

- upgrading and optimizing the software security installed during Phase 1;
- preparation and implementation of a project "System for access control to corporate information resources on the basis of PKI technology (digital certificates)".

The laws concerning supplies to ships sailing under the Bulgarian flag are strictly observed.

At the present moment a "VTMAS" system is under construction. It includes monitoring, control and information services for the traffic of ships.